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10/812,139

03/29/2004

Pavan Deolasee

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RAYMOND R. MOSER JR., ESQ.

MOSER IP LAW GROUP/SYMANTEC CORPORATION

1030 BROAD STREET

2ND FLOOR

SHREWSBURY, NJ 07702

EXAMINER

IQBAL, NADEEM

ART UNIT

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/812,139	<b>Applicant(s)</b> DEOLASEE ET AL.	
	<b>Examiner</b> Nadeem Iqbal	<b>Art Unit</b> 2114	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 January 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7, 9-14 and 16-19 is/are rejected.
- 7) ☒ Claim(s) 6, 8 and 15 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

This office action is in response to an Appeal brief being filed on Jan 8, 2008. This office action would reopen prosecution on this case since new references are discovered which read on the claims during an updated search on this case.

#### ***Claim Objections***

1. The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).
2. Claim 11 must be indicated as Canceled since it is not included in the listing of claims for consideration.

Misnumbered claims 12-19 been renumbered 11-18.

#### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an

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international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 1 & 2 are rejected under 35 U.S.C. 102(e) as being anticipated by Noonan et al., (U.S. Patent number 7069401).

3. As per claim 1, Noonan discloses a system and method that enable integrated scheduling and management of frozen images for the purpose of backup and recovery. He also discloses accessing checkpoint data on the plurality of backup servers (col. 4, lines 54-59). He also discloses distributing the checkpoint data and storing the distributed checkpoint data on the plurality of servers (col. 5, lines 30-33, lines 54-57, lines 64-67, col. 6, lines 51-55).

4. As per claim 2, Noonan discloses creating a redundancy group of checkpoint data and storing the redundancy group of checkpoint data upon the plurality of backup servers (col. 6, lines 51-58).

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any

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evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 3-5, 7, 9, 10, 12-14, 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Noonan et al., (U.S. Patent number 7069401) as applied to claims 1-2 above, and further in view of Williams et. al., (U.S. Patent number 6513050).

8. As per claim 3, Noonan does not explicitly disclose subsegmenting the checkpoint data and forming groups of subsegments. Williams discloses dividing the base file into a series of segments, generating for each segment a segment description. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to include the invention of Williams into the invention of Noonan. This is because such an inclusion provides desirable advantages including enabling the efficiency checkpoint data and its application to networks that can reduce networking cost as taught by Williams (col. 5, lines 31-34, lines 40-44).

9. As per claim 4, Williams discloses striping the subsegments across a plurality of backup servers (col. 5, lines 23-27).

10. As per claim 5, Noonan discloses creating parity data for each group (col. 5, lines 64-67).

11. As per claim 7, Noonan discloses mirroring the checkpoint data onto the plurality of backup servers (col. 5, lines 29-33, col. 6, lines 6-12).

12. As per claims 9 & 10, Noonan discloses a system for scheduling and management of frozen images for the purpose of backup and recovery. He discloses a production server for generating checkpoint data (col. 4, lines 54-59). He also discloses means for forming distributed

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checkpoint data and storing the distributed checkpoint data on the plurality of servers (col. 5, lines 30-33, lines 54-57, lines 64-67, col. 6, lines 51-55). Noonan does not explicitly disclose the plurality of backup servers storing at least one subsegment of the distributed checkpoint data.

Williams discloses dividing the base file into a series of segments, generating for each segment a segment description. It would have been obvious to a person of ordinary skill in the art to include the invention of Williams into the invention of Noonan. This is because such an inclusion provides desirables advantages including enabling the efficiency checkpoint data and its application to networks that can reduce networking cost as taught by Williams (col. 5, lines 31-34, lines 40-44).

13. As per claim 11, Noonan disclose that the forming means is located within a computer that is separate from the production server or the plurality of backup servers (col. 5, lines 30-33, lines 54-57, lines 64-67, col. 6, lines 51-55).

14. As per claim 12, Noonan discloses means for striping the subsegments onto a plurality of backup servers (col. 5, lines 23-27).

15. As per claim 13, Noonan discloses an apparatus for generating fault tolerant checkpoint data comprising a first server that accesses checkpoint data (col. 4, lines 54-59). Noonan does not explicitly disclose segmenting the checkpoint data and supplying the segments of the checkpoint data to a plurality of backup servers. Williams discloses dividing the base file into a series of segments, generating for each segment a segment description. It would have been obvious to a person of ordinary skill in the art to include the invention of Williams into the invention of Noonan. This is because such an inclusion provides desirables advantages including enabling the

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efficiency checkpoint data and its application to networks that can reduce networking cost as taught by Williams (col. 5, lines 31-34, lines 40-44).

16. As per claim 14, Noonan discloses the server producing parity data for the segments of checkpoint data and supplies the parity data to the plurality of second servers (col. 5, lines 64-67).

17. As per claim 16, Noonan discloses a method of generating fault tolerant checkpoint data comprising accessing checkpoint data that is produced by a first server (col. 4, lines 54-59).

Noonan does not explicitly disclose segmenting the checkpoint data and supplying the segments of the checkpoint data to a plurality of second servers. Williams discloses dividing the base file into a series of segments, generating for each segment a segment description. It would have been obvious to a person of ordinary skill in the art to include the invention of Williams into the invention of Noonan. This is because such an inclusion provides desirable advantages including enabling the efficiency checkpoint data and its application to networks that can reduce networking cost as taught by Williams (col. 5, lines 31-34, lines 40-44).

18. As per claim 17, Noonan discloses the server producing parity data for the segments of checkpoint data and supplies the parity data to the plurality of second servers (col. 5, lines 64-67).

19. As per claim 18, Noonan discloses supplying the segments of checkpoint data to the plurality of second servers in a striped manner (col. 5, lines 23-27).

***Allowable Subject Matter***

20. Claims 6, 8, 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nadeem Iqbal whose telephone number is (571)-272-3659. The examiner can normally be reached on M-F (8:00-5:30) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Scott Baderman can be reached on (571)-272-3644. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Nadeem Iqbal/  
Primary Examiner, Art Unit 2114

Nadeem Iqbal  
Primary Examiner  
Art Unit 2114



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